IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 48

UNITED MINE WORKERS OF AMERICA,
Petitioner

v.

JAMES M. PENNINGTON, RAYMOND E. PHILLIPS and LILLIAN GOAD PHILLIPS, *Admx. of the Estate of* BURSE PHILLIPS, deceased,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY BRIEF

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Answers to Respondents' (Phillips') brief are found in Petitioner's (UMW) main brief but inaccuracies in Phillips' brief compel this reply.

Phillips' attempted summation of UMW's arguments is an aberration of UMW's position as set forth in its brief. The entire tenor of its brief opposes the concept expressed in Phillips' summation (Phillips' Brief 11), that UMW argues that *Sherman* permits a union to be "excused if one of the purposes of market restraints

pursuant to a conspiracy with business groups is to promote otherwise legitimate Union purposes". UMW argues antithetically that no conspiracy existed and no conspiracy was proved.

Nor has UMW in its brief attacked prior decisions of this Court as "not sound precedents", as Phillips (Br. 11) attributes to it. Though UMW cites *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797 seven times, none supports Phillips' contention of UMW's attack on its validity. *Allen Bradley* is simply not apposite because its factual situation, totally different from that presented herein, produced the conspiracy which the Court condemned. But, it is notable that in *Allen Bradley*, Mr. Justice Black carefully noted that the labor agreement "standing alone would not have violated" *Sherman* and, as carefully he pointed out that "it did not stand alone", explaining "It was but one element in a far larger program in which contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business men from that area, and to charge the public prices above a competitive level" (325 U. S. 809). Such a program is wholly lacking herein. Even Phillips has not contended for its existence. Had the union acting alone added to costs or caused "individual refusals of all their employers to buy electrical equipment not made by Local No. 3", then, as *Allen Bradley* declares, "it would have been the *natural consequence of labor union activities exempted by the Clayton Act from the coverage of*" Sherman (p. 809). Thus, it becomes clear that by its assertion (Br. 14) that UMW's promotion of legitimate ends of labor in improving its members' conditions "was not an excuse *when there were also present purposes which violated the Sherman Act*",

All emphasis herein are supplied, unless otherwise indicated.

Phillips obviously equates "*purposes*" with "*illicit combination* between a union and business group" (Br. 14), which Phillips assumes in the instant case and which UMW has shown fully in its main brief did not exist under the proof.

Nor is Phillips' conspiracy assertions (Br. 16) aided by its citation of *United Bro. of Carpenters* v. *U. S.*, 330 U. S. 395. Phillips' comparison of *Carpenters* with *Allen Bradley* (Br. 16) sufficiently shows Carpenters' inapplicability herein. Indeed, the Ninth Circuit's opinion in *Carpenters (Lumber Products Assoc., Inc.* v. *U. S.*, 9 Cir., 144 F. 2d 546), stresses *Carpenters'* similarity to *Allen Bradley* in stating (p. 552), ". . . we find evidence of agreements between the two groups and conduct on the part of each directed at the elimination of competition from the northern products by the price control", which the Ninth Circuit characterized as "squeezing implements to extoft what, in effect, is a capital levy on the home builder and other consumers" (144 F. 2d 551). Indeed, this Court's citation of *Allen Bradley* as support for *Carpenters* (330 U. S. 400) indicates *Carpenter* to be an *Allen Bradley type of situation* which, as has been shown, has no relevancy herein.

Further, Phillips' comparison of the clause in *Carpenters'* labor contract with the protective wage clause in UMW's contract is not apt. In *Carpenter* (330 U. S. 395) the clause provided that "no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills, or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement (330 U. S. 399). On the other

hand, UMW's contract deals with sub-contracting[2]. Indeed, in the recent *Fibreboard Paper Products Corp.* v. *NLRB*, ____ U. S. ____, 13 L. ed 2d 233 (Dec. 14, 1964), this Court declared that replacement of employees in an existing contract unit with those of an independent contractor to do the same work under similar conditions of employment is a mandatory subject of collective bargaining under the Act's Section 8(d), making it an employer's duty to confer in good faith with the Union representative of his employees relative to the inclusion of such sub-contracting.

Similarly, contrary to Phillips' assertion (Br. 24), UMW has not, as Phillips' states (Br. 24), taken "occasional jabs" at *Apex, Hutcheson, Allen Bradley and Carpenters.* In fact, UMW's brief relies upon *Apex* and *Hutcheson* in eleven and seven instances, respectively.

That Phillips' brief assumes proof of the conspiracy is made evident in its assertion (Br. 21) that "Acts done to give effect to the conspiracy may be, within themselves, wholly innocent acts" but that "if they are part of the sum of the acts . . . relied upon to effectuate the conspiracy . . . they come within" *Sherman's* prohibition, citing *American Tobacco Co.* v. *United States*, 328 U. S. 781, 809. Phillips' thesis is readily answered by *Allen Bradley's* recognition that conduct permitted by labor statutes

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[2]UMW's 1958 agreement provided *inter alia* (p. 1109a): "It is recognized that when signatory operators mine, prepare, or procure or acquire under sub-contract arrangements bituminous coal mined under terms and conditions less favorable than those provided for in this contract, they deprive employees of employment opportunities, employment conditions, and other benefits which these employees are entitled to have safeguarded, stabilized and protected. Accordingly, the operators agree that all bituminous coal mined, produced or prepared by them or any of them, or procured or acquired by them or any of them under a sub-contract arrangement, shall be and shall have been mined or produced under terms and conditions which are as favorable to the employees as those provided for in this contract."

"is not to be declared a violation of Federal law" (325 U. S. 806).

UMW's main brief shows that the elements upon which the Sixth Circuit premised its affirmance of the jury's verdict are inconsonant with this Court's decisional law and congressional enactments expressive of national labor policy. Phillips' brief does not undertake to answer UMW's contentions that such elements do not accord with such decisions and legislation. UMW reiterates what it said in its main brief, namely that "the claimed existence" of a conspiracy herein is to be found in Phillips' constant assertion thereof "rather than in the proof." *G. & P. Amusement Co.* v. *Regent Theater Co.*, D.C., N.D. Ohio, 1952, 107 F. Supp. 453, 461.

CONCLUSION

For the foregoing reasons, and those which are assigned and discussed in UMW's main brief, UMW submits this Court should grant the relief sought by UMW in its original brief (p. 72).

Respectfully submitted,

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